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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,497	10/30/2003	Jim E. Rainey	6560P002	9592
8791 7590 11/26/2008 BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP 1279 OAKMEAD PARKWAY SUNNYVALE, CA 94085-4040				
EXAMINER				
KAZIMI, HANI M				
ART UNIT		PAPER NUMBER		
3691				
MAIL DATE		DELIVERY MODE		
11/26/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/698,497

Applicant(s)

RAINEY, JIM E.

Examiner

Hani Kazimi

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on August 1st 2008. Claims 1-26 are pending in this application.

Response to Applicant's Amendment

2. Applicants' amendments filed on August 1st 2008 have been fully considered, and discussed in the next section below or within the following rejections under 35 U.S.C. § 103. Applicants' request for allowance is respectfully denied.

Response to Applicants' Amendment

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis et al (US 6269361) in view of Canali et al (US 7272579).

Claims 1, 7, 13 and 19, Davis teaches receiving a plurality of primary bids from plurality of primary bidders respectively displaying an associated advertisement within a results page of a search based on a search string.

Davis does not explicitly teach receiving a selectively placed secondary bid from a secondary bidder to increase one of the primary bids of one of the primary bidder by a monetary amount; and storing the bids (abstract, col. 5, lines 35-52).

However, Canali teaches the concepts of combining a first bid and a second bid of first vendor and a second vendor respectively and storing the second bid (col. 16, line 63 through col. 17, lines 3; col. 18, lines 8-10). Canali teaches this concept in the reverse auction format in which the lowest bid wins and in which the combination of the primary bid and the secondary bid decreases the price. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Davis (forward auction format) to include this concept of combining bids as taught by Canali (concept as exemplified in reverse auction format) for the obvious reason of increasing the chances of being placed at a more advantageous spot in the search result list.

Claims 2, 8, 14, 17, 20 and 23, Davis teaches wherein the primary bid is expressed as a price-per-action that the primary bidder is willing to pay for a particular action (fig. 9). Davis does not explicitly teach wherein each of the primary bidders is a

retailer of one or more products or services and the secondary bidder is a manufacturer of at least one of those products or services. However, Canali teaches primary bidders and secondary bidders. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Davis and Canali combination to have the primary bidders and the secondary bidders in Canali be associated with the retailer and manufacturer in order to expand the field of use of the system, thereby enhancing its functionality.

Claims 3, 9, 15, 18, 21 and 24: Davis teaches wherein the particular action is selected from the group consisting of a cost-per-acquisition, a cost-per-lead, and a cost-per-click (fig. 9).

Claims 4, 11 and 26: Davis does not explicitly teach comprising allowing more than one secondary bidder to selectively place a secondary bid to augment the primary bid of the primary bidder.

However, Canali teaches the concepts of combining a first bid and a second bid of first vendor and a second vendor respectively and storing the second bid (col. 16, line 63 through col. 17, lines 3; col. 18, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Davis to allow combining bids as taught by Canali for the obvious reason of increasing the chances of being placed at a more advantageous spot in the search result list.

Claims 5, 10, 16, 22 and 25: Davis teaches comprising determining an order in which the associated advertisement of each bidder is to be displayed on the results page. Davis does not explicitly teach that the order is based on a combination of the primary bidder and each secondary bid associated therewith.

However, Canali teaches the concepts of combining a first bid and a second bid of first vendor and a second vendor respectively and storing the second bid (col. 16, line 63 through col. 17, lines 3; col. 18, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Davis to allow combining bids as taught by Canali for the obvious reason of increasing the chances of being placed at a more advantageous spot in the search result list.

Claims 6 and 12: Davis and Canali do not explicitly teach wherein each secondary bid augments the primary bid only for a defined time period. However, official notice is hereby taken that the concept of specifying a time period for which a bid is submitted is old and well known. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination Davis and Canali to include this feature for the obvious advantage of providing flexibility to the bidders.

Response to Arguments

4. Applicant's arguments filed 8/1/2008 have been fully considered but they are not persuasive.

Applicant argues that the combination of Davis and Canali is not proper because Davis teaches forward auction format while Canali teaches the reverse auction format. Examiner respectfully disagrees. Canali is not relied upon to teach the forward auction format since this is explicit in Davis. However, the Canali reference teaches the exact concept of combining bids as recited in the claims, albeit in the reverse auction format. One of ordinary in the art would recognize the advantages of applying the same concept in the forward auction format as articulated in the rejection above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hani Kazimi whose telephone number is (571) 272-6745. The examiner can normally be reached Monday-Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691